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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 940

STEPHEN J. OLAH,
Petitioner,

vs.

GARVIS L. SAMS, ALBERT SIDNEY PARKER, FRANK D. HOLCOMB, INDIVIDUALLY AND AS MEMBERS OF THE GRIEVANCE TRIBUNAL OF THE STATE DISCIPLINARY BOARD OF THE STATE BAR OF GEORGIA, IN DOCKET No. 37; CLINTON J. MORGAN, THE DISTRICT REPRESENTATIVE OF THE STATE DISCIPLINARY BOARD, ASA W. CANDLER, CHAIRMAN OF SAID BOARD, AND THE STATE BAR OF GEORGIA,
Respondents.

BRIEF OF RESONDENTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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BRIEF OF RESONDENTS IN OPPOSITION TO QUESTIONS PRESENTED

QUESTION PRESENTED

Petitioner recites nine questions presented for review and we suggest that even protecting each and every contention of petitioner these questions might be more simply and with less repetition stated as follows:

Does (1) the "State Bar of Georgia Act" (Georgia Laws 1963, pages 70-72) or (2) the Order of the Supreme Court of Georgia [219 Georgia 873 et seq. (1963)], creating the integrated bar as an administrative arm of the court and subsequent amendments thereto, or (3) the

rules and regulations for organization and government of the State Bar of Georgia as approved by the Supreme Court of Georgia in requiring payment of an annual fee, and providing for preliminary disciplinary proceedings by the State Disciplinary Board of the State Bar of Georgia directed toward recommendations as to sanction and report to the courts violate any right of petitioner under the terms of the First, Fifth or Fourteenth Amendments to the United States Constitution?

STATEMENT OF THE CASE

Respondents incorporate by reference and adopt the statement of the case by the Georgia Supreme Court in the opinion review of which is sought, as set out in the appendix of the Petition for Writ of Certiorari beginning on page 15 of that Petition. Actually the statement by petitioner is substantially correct except that there are three aspects of the case not clearly reflected in that statement.

(1) The State Bar of Georgia is not an autonomous body which may enact and enforce its own rules, but on the contrary is an administrative arm of the court and has only such power and authority as is vested in it by the Supreme Court of Georgia.

(2) The State Bar of Georgia, its State Disciplinary Board and any one or more of its grievance tribunals under the rules approved by the Supreme Court are each and all together without the ultimate authority to pronounce disciplinary sanctions but are authorized to conduct investigations, hearings and conclude by making recommendation and report to the courts.

(3) The record in this case is absolutely silent as to there being prior to the filing of this petition any ob-

jection by petitioner to any expenditure by the State Bar, or payment by petitioner of membership fee under any protest, or any suggestion by petitioner of the impropriety of any such expenditure previously, presently or anticipated. Noting that petitioner's complaint contained allegations of unauthorized activity and of illegal expenditures of petitioner's dues, the Supreme Court of Georgia held that the question of whether there had been such activity and expenditure of funds was a question of fact which petitioner is entitled to support, if he can, with evidence. Accordingly, the trial court's denial of respondent's motion to dismiss was affirmed with regard to such allegations and the case ordered remanded to the trial court.

SUMMARY OF REASONS FOR DENIAL OF WRIT

1. The gravity and importance of the questions raised is conceded, but these questions have been adjudicated by the court of last resort of Georgia, by the courts of last resort of many other states and by the Supreme Court of the United States. We find no conflict or confusion in the cases.

2. The right of an attorney to due process of law is firmly established and the rules under consideration and the decisions of the Supreme Court of Georgia manifest due and complete adherence to this principle.

3. Petitioner insists that the Supreme Court of Georgia under its state constitutional authority limiting its jurisdiction has exceeded those limits. This argument confuses power and jurisdiction. While the jurisdiction of the court is fixed by one constitutional provision, judicial power is granted in another and different section of the state constitution which confers upon the court authority over and behind the jurisdictional restrictions.

4. Petitioner has utterly failed to show wherein the "State Bar of Georgia Act" passed by the General Assembly of Georgia, or the Rules of the Supreme Court of Georgia (whether "pursuant to that Act" or within its constitutionally granted or inherent power) providing for the creation, organization and government of the State Bar of Georgia, or these rules of such integrated bar approved by that court either in content or in application result in any infringement upon petitioner's rights under either the First, Fifth or Fourteenth Amendments to the United States Constitution.

ARGUMENT

The questions presented for review here in the last analysis sift down to one question and that is the question of the legitimacy of the unified or integrated bar. This question has been before the Supreme Court of Georgia in four cases since the State Bar of Georgia came into being in 1964, and that legitimacy has been consistently sustained. In the first of these cases the Court manifested its concern for and stated its insistence upon strict adherence to all requirements of due process in connection with disciplinary proceedings. *Clary* v. *Mathews,* 224 Ga. 82, 160 S.E.2d 338 (1968). The second and third cases involved due process and also the overall constitutionality of the creation, organization and rules of the integrated bar and in both of these cases certiorari was denied by the United States Supreme Court. *Wallace* v. *Wallace,* 225 Ga. 102, 166 S.E.2d 718 (1969), *cert. denied* 38 U.S.L. Week 3192 (U.S. Nov. 24, 1969) (No. 117, October Term 1969). *Wilson* v. *State Bar of Georgia,* 225 Ga. 343, 168 S.E.2d 584 (1969), *cert. denied* 38 U.S.L. Week 3210 (U.S. December 8, 1969) (No. 568, October Term 1969). The fourth one of these cases is the instant case, review of which is sought by this petition.

Unified or integrated bars are now existent in thirty states, Puerto Rico and the Virgin Islands. The earliest of these was formed in 1921 in North Dakota and the most recent in New Hampshire in 1968. In no jurisdiction where formed has an integrated bar been repudiated by choice, by legislation or by judicial decision. The same questions raised in the instant case were raised in this Court in 1961 and in that case the legitimacy and the constitutionality of the State Bar of Wisconsin was sustained. *Lathrop* v. *Donohue,* 367 U.S. 820 (1961). In 1963, when the Supreme Court of Georgia had before it the motion of the Georgia Bar Association for the integration of the State Bar of Georgia, the brief in support of that motion relied not only upon decisions of the courts of other states but also upon *Lathrop* v. *Donohue, supra.*

This Court has recognized that a state has the power to prescribe the conditions of admission to the bar [*Konigsberg* v. *State Bar,* 366 U.S. 36 (1961) and *In re Anastaple,* 366 U.S. 82 (1961)] and over the conduct of lawyers after admission [*Cohen* v. *Hurley,* 366 U.S. 117, 123-124 (1961), reversed on other grounds by *Spevack* v. *Klein,* 385 U.S. 511 (1967)]. It would seem that the power of a state to regulate the practice of law is even greater than its power to prescribe membership in a union by an employee [*Railway Employees' Department* v. *Hanson,* 351 U.S. 225 (1956)] since it involves the administration of justice—"the highest duty of government".

Not only has the Supreme Court of Georgia been mindful of the imperative that the State Bar of Georgia is not to impair or abrogate any constitutional rights of any member, but it has since 1964 taken occasion to twice remind the State Bar of Georgia of such necessity. *Clary* v. *Mathews,* 224 Ga. 82, 160 S.E.2d (1968). *Wilson* v.

State Bar of Georgia, 225 Ga. 343, 168 S.E.2d 584 (1969), *cert. denied* 38 U.S.L. Week 3210 (U.S. December 8, 1969) (No. 568, October Term 1969).

Petitioner suggests and contends that the instant case from Georgia is not comparable to the Wisconsin case of *Lathrop* v. *Donohue, supra,* in that the jurisdiction of the Supreme Court of Georgia is by the Georgia Constitution more restricted or limited. Without regard to jurisdictional limitations on either court, the answer lies in the vesting of judicial power sections of the two state constitutions.

> "The judicial powers of this State shall be vested in a Supreme Court, a Court of Appeals, Superior Courts, Courts of Ordinary, Justices of the Peace, Notaries Public who are ex-officio Justices of the Peace, and such other Courts as have been or may be established by law." Constitution of Georgia, Article VI, Section I, paragraph I (Ga. Code Ann. § 2-3601).

> "The judicial power of this state, both as to matters of law and equity, shall be vested in a supreme court, circuits courts, courts of probate, and in justices of the peace. . . . " Constitution of Wisconsin, Article VII, Section 2.

This contention of petitioner was answered by the Supreme Court of Georgia which held:

> "This argument confuses power and jurisdiction. Jurisdiction refers to the types of cases the court can hear and decide. Power includes the authority to perform any function reasonably necessary to effectuate its jurisdiction, improve the administration of justice, and protect the judiciary as an independent department of the government."
>
> *Wallace* v. *Wallace,* 225 Ga. 102 at 111, 166 S.E.2d 718 at 724 (1969), *cert. denied* 38 LW 3192, No. 117, October Term 1969.

The decisions of the Georgia Supreme Court with regard to the construction of the Georgia Constitution and the validity thereunder of legislative acts or orders of the court present no federal question for review by this Court. *Merchants' Bank* v. *Pennsylvania,* 167 U.S. 461 (1897).

Petitioner's primary reliance is apparently placed on his contention that the Act of the General Assembly, the Orders of the Supreme Court of Georgia, and the rules and regulations governing the operations of the State Bar as approved by the Supreme Court of Georgia are each and all without adequate authority and as a consequence the application of such rules to him constitutes a violation of his rights under the stated amendments to the United States Constitution. In the cases heretofore cited this contention has been adjudicated and the existence of due authority confirmed.

The Supreme Court of Georgia in division 7 of the opinion, review of which is sought, gave consideration on the merits to the contentions of petitioner that his rights under the First, Fifth and Fourteenth Amendments of the United States Constitution were violated. All of these contentions save one were specifically denied and that ruling is sustained in its entirety by the decision of this Court in *Lathrop* v. *Donohue, supra.* One facet of the complaint was left for further consideration and the case remanded to the trial court for that purpose. This was the contention that State Bar funds were being expended for purposes outside the purposes and authority of the State Bar. The Supreme Court of Georgia held in division 11 of its opinion that determination of this issue should be deferred for an original decision by the trial court upon evidence submitted. This will involve a detailed study of the purposes and authority of the State

Bar, the propriety of its expenditures, objections registered, if any, to any particular expenditures and these matters are not presently apparent from the record. Adjudication where there exists such an evidentiary vacuum would be premature. Even as to this position, authority is found in the case of *Lathrop* v. *Donohue, supra.*

CONCLUSION

For the foregoing reasons and under the authorities cited it is urged that the petition for writ of certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Charles L. Gowen, counsel for Respondents, hereby certify that I have this day served 3 copies of the foregoing Brief of Respondents in Opposition to Petition for Writ of Certiorari upon opposing counsel by depositing 3 copies of the same in the United States Mail, properly addressed and with sufficient postage thereon, to each of the following:

G. Seals Aiken
1409-10 Candler Building
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George W. Finch
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Atlanta, Georgia

This ..... day of ....., 19.....

.....
CHARLES L. GOWEN